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PREPARATORY COMMITTEE FOR THE UNITED NATIONS
CONFERENCE ON ENVIRONMENT AND DEVELOPMENT
Third session
Geneva, 12 August - 4 September 1991
Agenda item 2 (c)

PREPARATIONS FOR THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT ON THE BASIS OF GENERAL ASSEMBLY RESOLUTION 44/228 AND TAKING INTO ACCOUNT OTHER RELEVANT GENERAL ASSEMBLY RESOLUTIONS

CROSS SECTORAL ISSUES

Position paper submitted by Argentina and Brazil

Financial resources

GE.91-72451/1414H

FINANCIAL MECHANISMS FOR THE PROMOTION OF SUSTAINABLE DEVELOPMENT

I. Principles

1. The growing threat of imbalance in the global ecosystem is a direct consequence of development models that have been adopted since the first industrial revolution, especially in the developed world, where inadequate production, consumption, and waste standards have prevailed, particularly in regard to energy sources. In developing countries, environmental problems originate mainly from development models which have not created conditions to overcome poverty, with ensuing environmental degradation, which is aggravated by the limited access these countries have to environmentally sound technologies.

2. In order to solve the serious environmental problems of our days, efforts are required from the international community as a whole. The main effort must come from the highly industrialized countries, which are in a better position in terms of resources and which have played a more significant part in bringing about the damages and risks we are facing today.

3. The promotion of sustainable development is the fundamental goal of the Rio Conference. This concept was defined by the Governing Council of UNEP as the kind of development which meets the present needs without jeopardizing those of future generations and which does not imply, from any point of view, any intereference in the national sovereignty of States. The implementation of sustainable development involves greater international cooperation, including assistance to developing countries, according to their national development plans, priorities and objectives. Sustainable development also depends on a favourable international economic situation capable of producing sustainable economic growth in all countries. Therefore, it requires a prompt solution to the economic crisis which affects the developing world through stepped-up flows of financial and technological aid to these countries. In addition, the consolidation of more equitable international trade mechanisms is essential. Finally, sustainable development implies the incorporation of environmental considerations into the planning process and economic policies, requiring substantial investments in the protection of the environment on a global and local scale without introducing a new form of conditionality to the funding of development.

4. Given the economic and financial restrictions developing countries face, the attainment of a common objective of sustainable development requires an expanded flow of funds to finance programmes and projects aimed at promoting environmentally sound development models in these countries, without sapping the funds already allocated to traditional international cooperation initiatives. These funds must therefore be new and additional.

5. The funds for initiatives directly related to protect and recover the quality of the environment are, in most cases, channelled to projects which produce none or very little financial return. A highly concessional component must also be incorporated to these funds, so that the disbursements may be made on a non-refundable basis or with preferential return rates, according to the characteristics of each project. One must not forget that important

social gains will be achieved by the implementation of environmental projects. This is an economic fact that would by itself justify the financing of such projects, either by national means or by the international community.

6. If the Rio Conference is to make fundamental decisions aimed at promoting sustainable development on a global scale and establishing a comprehensive action programme in this regard, we must bear in mind that the effectiveness and credibility of those decisions directly depend on a financial support mechanism capable of making the necessary investments feasible in the developing world.

7. In tune with the new rationale of sustainable development, it is worthwhile to point out that an environmental expense should be seen more as an investment, than a cost, especially in terms of the creation of social benefits, even if only on a long-term basis.

8. The new financial resources should be channelled by means of appropriate institutional mechanisms. The mechanisms available today are clearly inadequate for the new commitments to be taken on by the international community at the Rio Conference. The main problems of the "traditional" financing sources - bilateral cooperation, UNEP Environment Fund, multilateral financing institutions, and the Global Environmental Facility of the World Bank, among others - are the insufficiency or nonexistence of concessional disbursement modes, the imposition of conditionalities and limitations on meeting the receipient's priorities, and the "stagnant" treatment given to the environment and development issues.

9. In addition, the new resources cannot be limited only to financing initiatives related to environmental issues commonly defined as global. They should also serve the local and domestic environmental issues of developing countries. It is important to notice that there is not a hierarchy between the local and the global problems. Although local problems effect more directly the communities which experience them, they often have also an impact on the ecosystem of the planet as a whole.

10. The several multilateral legal instruments which are already available or are in negotiation on the global issues related to the environment (ozone layer, biological diversity, climate change, etc.) should include financial mechanisms of their own. This would ensure concessional resources to the developing countries, which are parties to it, aimed at covering, in full, the incremental costs of their obligations. Even if the developing countries accept the burden of international legal obligations related to the protection of the environment in connection with problems for which they are accountable only to a limited extent, they will hardly have the means to implement their commitments.

11. In addition to the mechanisms provided for in specific international instruments, a Fund for the Promotion of Sustainable Development (henceforth referred to as "the Fund") should be established on an open basis with the aim of financing solutions to the environmental problems faced by developing countries, and the expansion of their national technological capacities, as well as the environmental components of development programmes and projects, so as to promote the sustainable development model.

12. The contributions made to the various new mechanisms, that is, the Fund and the mechanisms linked to agreements on global issues, should be compulsorily provided by the countries that are in a position to do so. They should be preferentially set according to technical criteria, with the aim of guaranteeing the predictability and steadiness of the necessary resources to be applied in the different objectives involved. These resources will be channelled to the developing countries, which will have no obligation to contribute.

13. The financial resources to be invested in domestic programmes and projects of the developing countries would include the financing of the following initiatives, inter alia, according to Agenda 21:

(a) Basic sanitation projects in urban areas with a large concentration of population;

(b) Water decontamination and watershed protection projects;

(c) Control of chemical and solid waste, particularly of toxic and dangerous substances;

(d) Air pollution control in industrial areas;

(e) Protection and rational use of coastal zones;

(f) Protection of land resources: actions against desertification, deforestation, erosion, and drought; and support to rural communities, so as to settle population in areas with agricultural capability and alleviate pressure on forest areas;

(g) Actions aimed at eradicating poverty and improving living and working conditions in rural and urban areas;

(h) Actions aimed at promoting improvements in the conditions of health and education.

14. There should be a clear definition of the donor countries and the recipient countries. According to the decisions and recommendations of the Rio Conference and to the criteria adopted by the United Nations, the developing countries shall be the recipients.

15. The decision-making process in connection with the different financial mechanisms - the Fund and the mechanisms of the conventions - should be based on the representation on a parity basis of the recipient and donor countries. It should preserve the decision-making autonomy of the parties to each of the agreements on global issues and a corresponding system should be conceived for the Fund.

16. The terms for the disbursement of resources allocated to each environmental project financed by the Fund and by specific mechanisms should be adapted to the nature of such projects, taking into account not only its financial return features, but also its dimension and extension.

II. Financing Mechanisms

17. A first issue to be considered is the definition, even if appproximately, of the amount of resources needed to meet the priorities of the developing countries and their commitments in connection with the agreements on global issues. Some data is available in the document on Financial Mechanisms prepared by the secretariat of UNCED to inform the debates of the III Session of the Preparatory Committee (A/CONF.151/PC/51):

(a) Total amount of Official Development Assistance (ODA) - 55 billion dollars/year, which is a modest figure as compared to the 25-trillion-dollar global-wide GDP, and which corresponds to about 0.35% of the GDP of OCDE countries, and only half of the 0.7% of GDP goal for ODA set up by the United Nations;

(b) Additional resources necessary to assure a minimum growth rate combined with environment-protecting strategies in LDCs: 60 billion additional dollars in 1990, reaching a sum of 140 billion additional dollars in the year 2000 (WIDER - World Institute for Development Economics Research, United Nations University);

(c) According to WIDER, the above-mentioned sums can be fully covered by the international financing capacity. The key issue is political will.

18. "Accurately" defining the sums may be a time-consuming task, and this fact should not be used as an excuse to impose obstacles on the creation of appropriate financial mechanisms and their implementation. The definition of necessary sums will be refined as operation of the Action Programme to be adopted by the Rio Conference begins.

19. The precedent of the Montreal Protocol Fund and the experience acquired during its first year of activities must be taken into account in the process of establishing the new financial mechanisms. Identical or similar solutions to the ones defined by the parties to the Protocol will be used as a basis for the referral of concrete proposals on the following points:

(a) Institutions under which the different financial mechanisms will be established;

(b) Financial management (a Treasury function);

(c) Decision-making on the financing of projects;

(d) Implementation and follow-up of operational activities;

(e) Institutions responsible for the secretariat function of the Fund.

III. Proposal for the Creation of the Fund for the Promotion of Sustainable Development.

20. The Rio Conference will decide on the institutional location of the Fund. The institution under which the Fund will be created would be basically charged with treasury functions.

21. The new Fund will be served by a small secretariat, but one consistent with its assignments.

22. The decision-making process related to the approval of projects within the context of the Fund will require the participation on a parity basis of donor and recipient countries.

23. Designed International Institutions will act as "implementing agencies" within the limits of their institutional competence. The terms set for the cooperation between these "agencies" and the Fund will be defined by means of agreements individually negotiated with each "agency".

IV. Setting Criteria for Compulsory Contributions to the Financial Mechanisms

24. The contributions to the future financial mechanisms should be defined according to specific criteria. It is also important to set a goal for the total amount of annual contributions, thereby ensuring the predictability of resources needed to finance the desired actions.

25. The financial mechanisms to be defined by the different conventions being negotiated at present should include the criteria for setting the contributions. Therefore, the assumptions listed below are more specifically related to the criteria which are applicable to the establishment of contributions to the Fund for the promotion of the sustainable development.

26. Bearing in mind that certain patterns of consumption and the use of some products, directly or indirectly, play a role in generating environmental problems, compulsory contributions could be set in order to promote the adoption of sustainable patterns worldwide and discourage the patterns of production and consumption that prevail in developed countries. An example which has been very often cited due to its contribution to pollution and environmental damage is the use of fossil fuels. The choice of the products and the value of contributions as a percentage of their consumption should be evaluated by specific fora of experts. One of the main advantages of this proposal is the fact that it is based on equity: excluding the developing countries, for obvious reasons, those countries among the developed countries with high rates of consumption should afford higher economic costs. An additional advantage is that low values established for widely-consumed products will produce substantive contributions, as the following examples show:

(a) Consumption of oil barrels in OECD countries: 37.5 million barrels/day = 13,687,500,000 barrels/year (1989). A tax of $US 1 on the consumption of each oil barrel (or equivalent product) would produce an annual global revenue of about 13.6 billion dollars;

(b) Motor-driven vehicles in circulation in OECD countries: in the USA alone, there are 177,135,000. A contribution of $US 10 for each vehicle/year would yield 1,771,350,000/year.

(c) Daily circulation of newspapers in OECD countries: in the USA alone, there are 267 copies/1,000 inhabitants (1983), or 63,546,000 copies/day = 23,194,290,000 copies/year. Contribution of $US 0.001 for each copy: $US 23,194,290,000/Year.

27. Each country should define its own means to raise resources to cover the cost of its contribution.

V. Raising Additional Resources for the Fund

28. Many innovative approaches may be considered in this connection, in addition to the compulsory contributions:

(a) Issue of Bonds. Environmental control projects would be funded by means of the issuance of bonds by international organizations, endorsed by the industrialized countries. The bonds would have a long reimbursement term (20 to 30 years) and the interest would be paid by the endorsing countries. The interest paid to the purchasers of the bonds would be low and would be free of taxes in the respective countries;

(b) Clearing house. Projects within the interests of developing countries would be submitted to the secretariat of the Fund. The latter would act as a clearing house, spotting possible alternative bilateral or multilateral financing sources. If the financing for the project is insufficient, it would be referred to the Executive Committee of the Fund, which would discuss the possibility of complementing the sums with the Fund's own resources. The main advantage of this system is that it allows the donors to apply their disbursements to earmarked projects.

(c) Green Mail. As a complementary resource-raising mechanism, an environmental stamp would be created to be used compulsorily in all international correspondence. It allows private individuals to make donations just by buying stamps. The idea has a strong marketing appeal. Just to illustrate the volume of resources that could be raised, it is worthwhile checking the following data:

(i) International correspondence (letters, "petit paquets", printed matter, etc.) exchanged in 1989: 8,224,000,000 units;

(ii) Correspondence (only regular letters) sent by the developed countries alone in 1989: 3,750,000,000 units;

(iii) Total domestic and international correspondence sent in 1989: 431,000,000,000*;

(d) Contributions from multilateral credit organizations. Also as a complementary mechanism, part of the net income of these institutions would be annually channelled to the Fund;

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* Source: UPU data, provided by the Brazilian Mailing and Telegraph Company

(e) Contributions from international indemnification and compensatory payments related to environmental accidents could be used as a capitalization mechanism for the Fund, if the Rio Conference makes a decision in that connection;

(f) Utilization of the Special Drawing Rights of the IMF;

(g) The importance, in this context, of irmproving terms of trade, with the consequent need to reduce the net transfer of resources from developing countries towards multilateral financial organizations.

VI. Resource-Raising by the Countries on Individual Bases

29. Debt for environmentally sound development programmes may be applied to countries individually and according to their convenience. It should not be regarded as a solution to be internationally advocated.

30. A system could also be devised according to which the resources from interest and principal payment of loans borrowed with the aim of promoting sustainable development would not necessarily return to their sources. In some cases, which are yet to be defined, these resources would be kept in national Funds set up according to the domestic rules of each country and in local current, to be allocated to environmental protection projects with no financial return. This proposal would be implemented without harming in any way the continuous flow of new resources to new projects. The advantage of this proposal is that it alleviates the foreign debt of the countries involved. The disadvantage is that it "stamps" the allocated money as a loan, which remains in the recipient country.

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CONFERENCE ON ENVIRONMENT AND DEVELOPMENT
Third session
Geneva, 12 August-4 September 1991
Agenda item 5

ADOPTION OF THE REPORT OF THE PREPARATORY COMMITTEE

Report of Working Group III

Rapporteur: Mr. John SLOAN (Canada)

I. ORGANIZATIONAL MATTERS

A. Organization of the session

1. Working Group III held 11 meetings (6th to 16th) from 19 to 30 August 1991.

B. Officers of the Working Group

2. The officers, who were elected by the Working Group at its first session, remained:

Chairman: Bedrich Moldan (Czechoslovakia)

Vice-Chairmen: Oswaldo de Rivero (Peru)
Reynaldo Arcilla (Philippines)
Albert Muchanga (Zambia)

Rapporteur: John Sloan (Canada).

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C. Adoption of the agenda and other organizational matters

At the 6th meeting, on 19 August, the Secretary-General of the Conference made an introductory statement on the work of the Working Group.

3. At its 6th meeting, on 19 August, the Working Group approved its agenda as contained in Section IV of document A/CONF.151/PC/39 and Corr.1. The agenda was as follows:

1. Adoption of the agenda and other organizational matters

2. Continuation and conclusion of the discussion on all matters pertaining to the terms of reference of Working Group III, as adopted, in accordance with General Assembly resolution 44/228

3. Survey of existing agreements and instruments, and criteria for evaluation

4. Principles on general rights and obligations

5. Other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Groups I and II and the plenary of the Preparatory Committee

6. Provisional agenda for the third session of Working Group III

7. Adoption of the report of Working Group III.

D. Documentation

4. The Working Group had before it the following documents:

(a) Progress report of the Secretary-General of the Conference on institutions (A/CONF.151/PC/36);

(b) Note by the secretariat on a survey of existing agreements and instruments, and criteria for evaluation (A/CONF.151/PC/77);

(c) Note by the secretariat on an annotated check-list of principles on general rights and obligations (A/CONF.151/PC/78);

(d) Progress report by the secretariat on the development of legal instruments for transboundary waters (A/CONF.151/PC/79);

(e) Progress report of the Secretary-General of the Conference on institutions (A/CONF.151/PC/80);

(f) Letter dated 27 June 1991 from the Permanent Representative of Peru to the United Nations Office at Geneva addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/81);

(g) Letter dated 17 July 1991 from the Permanent Representative of Peru to the United Nations Office at Geneva addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/83);

(h) Letter dated 19 March 1991 from the head of the delegation of Austria to the Preparatory Committee for the United Nations Conference on Environment and Development at its second session addressed to the Deputy Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/L.29);

(i) Letter dated 26 March 1991 from the head of the delegation of Austria to the Preparatory Committee for the United Nations Conference on Environment and Development at its second session addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/WG.III/L.1);

(j) United States proposal for improving United Nations institutional involvement in environmental affairs: enhancing central coordination and the role of UNEP (A/CONF.151/PC/WG.III/L.4);

(k) Letter dated 15 August 1991 from the Head of the delegation of Canada to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/WG.III/L.5);

(l) Draft proposal submitted by Ghana on behalf of the States Members of the United Nations that are members of the Group of 77 (A/CONF.151/PC/WG.III/L.6);

(m) Draft report of Working Group III (A/CONF.151/PC/WG.III.L.7 and Add.1);

(n) Chairman's consolidated draft (A/CONF.151/PC/WG.III/L.8 and Corr.1 and Add.1);

(o) Chairman's summary, submitted under item 3 (A/CONF.151/PC/WG.III/L.9 and Corr.1);

(p) Chairman's summary, submitted under item 5 (A/CONF.151/PC/WG.III/L.10);

(q) Draft decision submitted by Sweden (A/CONF.151/PC/WG.III/L.11);

(r) Draft decision submitted by Austria, Czechoslovakia, Hungary, Italy, Kenya, Poland, Switzerland and Yugoslavia (A/CONF.151/PC/WG.III/L.12);

(s) Chairman's summary, submitted under item 4 (A/CONF/151/PC/WG.III/L.13);

(t) Provisional agenda for the third session of Working Group III (A/CONF.151/PC/WG.III/L.14);

(u) Draft decisions submitted by the Chairman (A/CONF.151/PC/WG.III/L.15);

(v) Letter dated 23 August 1991 from the Permanent Representative of the Holy See to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/WG.III/L.16*);

(w) Letter dated 29 August 1991 from the Head of the delegation of Colombia to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development (A/CONF.151/PC/WG.III/L.17*);

(x) Draft decision proposed by the Chairman on the basis of informal consultations (A/CONF.151/PC/WG.III/L.18);

(y) Proposal submitted by the Union of Soviet Socialist Republics (A/CONF.151/PC/CRP.8).

5. A complete list of documents is contained in annex I to the report of the Preparatory Committee.

II. CONTINUATION AND CONCLUSION OF THE DISCUSSION ON ALL MATTERS PERTAINING TO THE TERMS OF REFERENCE OF WORKING GROUP III, AS ADOPTED, IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTION 44/228

6. The Working Group considered the question of the continuation and conclusion of the discussion on all matters pertaining to the terms of reference of Working Group III, as adopted, in accordance with General Assembly resolution 44/228 (agenda item 2) at its 6th meeting, on 19 August.

7. At the 6th meeting, on 19 August, the representative of the secretariat of the United Nations Conference on Environment and Development made an introductory statement. Statements were made by the representatives of Mali and Canada. The Chairman made a concluding statement.

III. SURVEY OF EXISTING AGREEMENTS AND INSTRUMENTS, AND CRITERIA FOR EVALUATION

8. The Working Group considered the question of the survey of existing agreements and instruments, and criteria for evaluation (agenda item 3) at its 6th, 7th, 14th and 15th meetings, on 19, 27 and 29 August.

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* To be issued.

9. At the 6th meeting, on 19 August, the representative of the secretariat of the United Nations Conference on Environment and Development made an introductory statement. Statements were made by the representatives of Sweden, United Republic of Tanzania, Peru, Mali, New Zealand, the United States of America, Brazil, Mexico, Tunisia, Austria, Malaysia, Burkina Faso, Kenya, Viet Nam and the Netherlands (on behalf of the European Community and its member States). Statements were also made by the representatives of the International Union for the Conservation of Nature and Natural Resources and Baha'i International Community, non-governmental organizations accredited to the Preparatory Committee in accordance with its decision 2/2.

10. At the 7th meeting, on 19 August, statements were made by the representatives of Italy, Kiribati, Egypt, Romania, Australia, Singapore, the Philippines, China, Chile, Indonesia, Nigeria, Poland, Germany, India, Kuwait, the Union of Soviet Socialist Republics, Zimbabwe, Canada, the Sudan, Peru, the United States of America and Mexico. The representative of the International Committee of the Red Cross made a statement. Statements were also made by the representatives of Greenpeace International, Four Directions Council and Consortium for Action to Protect the Earth (CAPE '92), non-governmental organizations accredited to the Preparatory Committee in accordance with its decision 2/2. The representative of the United Nations Centre on Transnational Corporations also made a statement.

11. The Chairman's summary of the discussion was subsequently issued in document A/CONF.151/PC/WG.III/L.9 and Corr.1.

12. At the 15th meeting, on 29 August, the Chairman introduced a draft decision, contained in document A/CONF.151/PC/WG.III/L.15, entitled "Survey of existing agreements and instruments, and criteria for evaluation", which he had submitted on the basis of informal consultations, and orally revised it as follows:

(a) In paragraph (b), the words "Agrees on" were replaced by the word "Welcomes";

(b) In paragraph (c), the words "agreed criteria" were replaced by the words "proposed criteria" and the phrase "and in cooperation with the international secretariats or depositaries concerned, as applicable" was added at the end of the paragraph.

13. At the same meeting, the Working Group approved the draft decision, as orally revised, and recommended it to the Preparatory Committee for adoption (see para. 44 below, draft decision I).

IV. PRINCIPLES ON GENERAL RIGHTS AND OBLIGATIONS

14. The Working Group considered the question of principles on general rights and obligations (agenda item 4) at its 8th to 10th, 14th and 16th meetings, on 20, 21 27 and 30 August.

15. At the 8th meeting, on 20 August, the representative of the secretariat of the United Nations Conference on Environment and Development made an introductory statement. Statements were made by the representatives of Canada, Peru, Egypt, the United States of America, the Union of Soviet Socialist Republics, China, Colombia, Romania, the United Republic of Tanzania, Singapore, Malta, Nigeria, Mali, Fiji, Mexico, New Zealand, Burkina Faso, Austria and Malaysia. The representative of the World Meteorological Organization also made a statement.

16. At the 9th meeting, on 20 August, statements were made by the representatives of the Netherlands (on behalf of the European Community and its member States), Gambia, Sweden, the Holy See, Germany, Niger, Chile, Pakistan, India, Brazil, Kenya, Kiribati, Algeria, Australia, the Philippines and Indonesia. The representative of the Food and Agriculture Organization of the United Nations also made a statement. Statements were made by the representatives of the International Confederation of Free Trade Unions, the Women's International League for Peace and Freedom, the Poverty and Affluence Working Group, Sahabat Alam Malaysia, Four Directions Council, Green Forum Philippines, the World Council of Churches and Brahma Kumaris World Spiritual University, non-governmental organizations accredited to the Preparatory Committee in accordance with its decisions 2/2 and ___.

17. At the 10th meeting, on 21 August, statements were made by the representatives of Côte d'Ivoire, the Republic of Korea, Norway, Japan, Zimbabwe, Cameroon, Bolivia, Venezuela, Trinidad and Tobago, the Sudan, Nepal, Tonga, Tunisia, Ghana (on behalf of the States Members of the United Nations that are members of the Group of 77), Malawi, Jamaica, Mauritius, Finland, Brazil, Italy and Saint Lucia. The Special Rapporteur on Human Rights and the Environment made a statement. The representative of the South Pacific Regional Environment Programme also made a statement. Statements were made by the representatives of the Natural Heritage Institute, Consortium for Action to Protect the Earth (CAPE '92), the United States Citizens' Network on UNCED, the International Indigenous Commission, Centre International de Droit Comparé de l'Environnement and the Public Campaign on Environment and Development, non-governmental organizations accredited to the Preparatory Committee in accordance with its decisions 2/2 and ___.

18. The Chairman's summary of the discussion was subsequently issued in document A/CONF.151/PC/WG.III/L.13.

19. At the 14th meeting, on 27 August, the representative of Ghana, on behalf of the States Members of the United Nations that are members of the Group of 77, introduced a draft decision (A/CONF.151/PC/WG.III/L.6) entitled "Rio de Janeiro Charter/Declaration on Environment and Development" and corrected subparagraph 2 (a) by replacing the word "natural" by the word "national".

20. At the same meeting, the representative of Australia made a statement.

21. At the 16th meeting, on 30 August, the Chairman introduced a draft decision (A/CONF.151/PC/WG.III/L.18), entitled "Principles on general rights and obligations", which he had submitted on the basis of informal consultations.

22. Statements were made by the representatives of the Netherlands (on behalf of the European Community and its member States), Ghana (on behalf of the States Members of the United Nations that are members of the Group of 77), Chile, the United States of America, Singapore, the United Republic of Tanzania, Romania, Tunisia, Mauritius, Nepal, Mauritania, Malta and the Union of Soviet Socialist Republics. The Secretary and the representative of the secretariat of the United Nations Conference on Environment and Development responded to questions raised.

23. At the same meeting, the Chairman orally revised the draft decision as follows:

(a) In paragraph (a), "A/CONF.151/PC/78 and" was inserted before the word "documents";

(b) Paragraph (b), which read:

"Decides to take action on A/CONF.151/PC/WG.III/L.6 at its fourth session;"

was replaced by the following text:

"Decides to consider and take appropriate action on A/CONF.151/PC/WG.III/L.6 at its fourth session;"

(c) In paragraph (c), the words "contained in these documents" were replaced by the words "contained in the above-mentioned documents" and the phrase "after the third session of the Preparatory Committee", were added at the end of the paragraph.

24. At the same meeting, the Working Group approved the draft decision, as orally revised, and recommended it to the Preparatory Committee for adoption (see para. 44 below, draft decision II).

V. OTHER LEGAL, INSTITUTIONAL AND RELATED MATTERS, AS WELL AS LEGAL AND INSTITUTIONAL ASPECTS OF CROSS-SECTORAL ISSUES, INCLUDING THOSE REFERRED TO WORKING GROUP III BY WORKING GROUPS I and II AND THE PLENARY OF THE PREPARATORY COMMITTEE

25. The working group considered the question of other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Groups I and II and the plenary of the Preparatory Committee (agenda item 5) at its 11th to 15th meetings, on 22, 23, 27 and 29 August 1991.

26. At the 11th meeting, on 22 August, the representative of the secretariat of the United Nations Conference on Environment and Development introduced the progress report of the Secretary-General of the Conference on institutions, (A/CONF.151/PC/80). Statements were made by the representatives of Peru, Singapore, Austria, the Netherlands (on behalf of the European Community and its member States), Chile, Brazil, Sweden, Canada, Switzerland, Mali, the United Republic of Tanzania, Malaysia, Mexico, China, Fiji and Cuba.

27. At the 12th meeting, on 22 August, statements were made by the representatives of Kuwait, Colombia, Romania, the United States of America, Finland, Algeria, Norway, Indonesia, Kenya, Australia, India, the Philippines, New Zealand, Czechoslovakia, Bangladesh, Germany, Zimbabwe and the Central African Republic. The representative of the Economic Commission for Latin America and the Caribbean made a statement on behalf of the regional commissions. Statements were also made by the Netherlands National Committee for IUCN, the Citizen's Alliance for Saving the Atmosphere and the Earth and the International Union for the Conservation of Nature and Natural Resources, non-governmental organizations accredited to the Preparatory Committee in accordance with its decisions 2/2 and ___.

28. At the 13th meeting, on 23 August, statements were made by the representatives of Pakistan, Zambia, Guyana, Barbados, Mauritius, Gambia, Malawi, Japan, Saint Lucia, the United States of America, Guinea, Egypt and Uganda. Statements were also made by the representatives of Consortium for Action to Protect the Earth (CAPE '92), Greenpeace International, World Association for World Federation, Centre of Development of International Law and Four Directions Council, non-governmental organizations accredited to the Preparatory Committee in accordance with its decisions 2/2 and ___.

29. The Chairman's summary of the discussion was subsequently issued in document A/CONF.151/PC/WG.III/L.10.

30. At the 14th meeting, on 27 August, the representative of Sweden introduced a draft decision entitled "Legal instruments for transboundary waters" (A/CONF.151/PC/WG.III/L.11).

31. At the same meeting, statements were made by the representatives of India and the Netherlands (on behalf of the European Community and its member States).

The Chairman made a statement.

32. At the 15th meeting, on 29 August, the Working Group was informed that, as a result of informal consultations on A/CONF.151/PC/WG.III/L.11, it had been agreed to replace the words in the operative paragraph "under the agenda item on other legal, institutional and related matters" by the words "under agenda item 2 of Working Group III at the fourth session of the Preparatory Committee."

33. At the same meeting, the Working Group approved the draft decision, as orally revised, and recommended it to the plenary of the Preparatory Committee for adoption (see para. 44 below, draft decision III).

34. At the 14th meeting, on 27 August, the representative of Austria, on behalf of Austria, Czechoslovakia, Hungary, Italy, Kenya, Poland, Switzerland and Yugoslavia, introduced a draft decision entitled "Environmental disputes: prevention and settlement" (A/CONF.151/PC/WG.III/L.12).

35. At the same meeting, statements were made by the representatives of the United States of America, India, Brazil, Argentina, the Netherlands (on behalf of the European Community and its member States), Mexico, Chile, Senegal and Peru.

36. At the 15th meeting, on 29 August, the Vice-Chairman, Mr. Muchanga (Zambia), informed the Working Group of the following changes to the draft decision which had been agreed to during informal consultations:

Operative paragraphs 1 and 2, which read:

"1. Decides to include in the provisional agenda for its fourth session, as a separate item, 'Dispute prevention and dispute settlement concerning the environment';

"2. Requests the secretariat, in the evaluation of international agreements in preparation for the fourth session of the Preparatory Committee, to give special attention to existing international mechanisms for the prevention and settlement of disputes concerning the environment, to analyse critically these existing mechanisms and to identify gaps therein."

were replaced by the following text:

"1. Decides to devote one or two sessions of Working Group III under agenda item 2 at the fourth session of the Preparatory Committee to subparagraph 15 (w) of General Assembly resolution 44/228; and

"2. Requests the secretariat, in the evaluation of international agreements in preparation for the fourth session of the Preparatory Committee, to give special attention to the mandate of paragraph 15 (w) of General Assembly resolution 44/228."

37. At the same meeting, the Working Group approved the draft decision, as orally revised, and recommended it to the plenary of the Preparatory Committee for adoption (see para. 44 below, draft decision IV).

38. Before the draft decision was approved, statements were made by the representatives of Nepal and the United Republic of Tanzania, as well as by the Chairman.

39. At the 15th meeting, on 29 August, the Chairman introduced a draft decision, also contained in document A/CONF.151/PC/WG.III/L.15, entitled "Other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Groups I and II and the plenary of the Committee", which he had submitted on the basis of informal consultations, and orally revised it as follows:

(a) The title of the draft decision was revised to read "Institutions";

(b) In subparagraph (a), the words "and the comments thereon, and" were added at the end of the paragraph;

(c) In paragraph (b), the words "and others" were inserted after the words "proposals made by delegations" and the words "as well as those contained in national reports, with a focus on options for action" were replaced by the words "as well as relevant observations that may be contained in national reports and originating from regional preparatory conferences, with a focus on options for action".

40. At the same meeting, the Working Group approved the draft decision, as orally revised, and recommended it to the Preparatory Committee for adoption (see para. 44 below, draft decision V).

VI. PROVISIONAL AGENDA FOR THE THIRD SESSION OF THE WORKING GROUP

41. At its 15th meeting, on 29 August, the Working Group approved the draft provisional agenda for its third session (A/CONF.151/PC/WG.III/L.14), as orally amended, and recommended it to the Preparatory Committee for adoption (see para. 44 below, draft decision VI).

42. Before the provisional agenda was approved, statements were made by the representatives of the Netherlands (on behalf of the European Community and its member States), the Union of Soviet Socialist Republics, Argentina, the Philippines, Australia and India. The representative of the secretariat of the United Nations Conference on Environment and Development also made a statement.

VII. ADOPTION OF THE REPORT OF WORKING GROUP III

43. At its 15th meeting, on 29 August, the Working Group adopted its draft report as contained in documents A/CONF.151/PC/WG.III/L.7 and Add.1, as amended during the discussion.

RECOMMENDATIONS OF WORKING GROUP III

44. Working Group III recommends to the Preparatory Committee for the United Nations Conference on Environment and Development the adoption of the following draft decisions:

DRAFT DECISION I

Survey of existing agreements and instruments, and criteria for evaluation

The Preparatory Committee for the United Nations Conference on Environment and Development:

(a) Takes note of the report by the secretariat on the survey of existing agreements and instruments, and criteria for evaluation (A/CONF.151/PC/77);

(b) Welcomes the expected outcome of its work on this agenda item, as reflected in annex I;

(c) Requests the Secretary-General of the United Nations Conference on Environment and Development to compile the necessary background information in accordance with the proposed criteria for evaluating the effectiveness of existing agreements and instruments (annex II), on the basis of a revised list of such agreements and instruments (annex III) and in cooperation with the international secretariats or depositaries concerned, as applicable.

ANNEX I

Expected outcomes

In accordance with its terms of reference, Working Group III will prepare an annotated list of existing international agreements and international legal instruments in the environmental field, describing their purpose and scope, evaluating their effectiveness, and examining possible areas for the further development of international environmental law, in the light of the need to integrate environment and development, especially taking into account the special needs and concerns of the developing countries.

Possible areas to be examined in the context of Agenda 21 are:

(a) Priorities for future law-making at the appropriate level, incorporating environmental and developmental concerns;

(b) Measures to promote and support the effective participation of developing countries in the negotiation and operation of international agreements or instruments, including technical and financial assistance and other available mechanisms for this purpose;

(c) Measures for effective implementation and compliance, regular assessment and timely review and adjustment of agreements or instruments by the Parties concerned;

(d) Measures for improving the effectiveness of institutions and procedures for the administration of agreements and instruments;

(e) Measures for the resolution and prevention of conflicts, including potential conflicts between environmental and development/trade agreements or instruments, also with a view to ensuring that such agreements and instruments are mutually reinforcing.

ANNEX II

Criteria for evaluating the effectiveness of existing agreements or instruments

(Some of the criteria listed may not be applicable to all agreements or instruments to be evaluated).

A. Objectives and achievement

1. What are the basic objectives formulated in the international agreements and instruments evaluated, and how do these objectives relate to the effective integration of environment and development?

2. In the case of regional agreements and instruments, what is their actual and potential bearing on global environmental protection and sustainable development?

3. Do these agreements or instruments take into account the special circumstances of developing countries?

4. To what extent have the basic objectives (environmental/developmental) formulated in international agreements and instruments been met, and how is goal achievement measured?

B. Participation

5. Is membership limited or open-ended?

6. Are reservations possible, and to what extent have they been used?

7. What is the current geographical distribution of membership in existing environmental agreements and instruments, especially as regards developing countries?

8. What is the record of actual participation by developing countries in the negotiation and drafting of these agreements and instruments, and in programme activities and meetings organized under these agreements and instruments?

9. Which incentives (e.g. financial, trade, technology benefits) are available to encourage participation and facilitate implementation by developing countries?

10. Which measures have been taken to promote and support the effective participation of developing countries in the negotiation and operation of international agreements or instruments, including technical and financial assistance and other available mechanisms for this purpose?

11. Which factors influenced the participation, especially of developing countries, in the agreement or instrument? e.g.

    (a) Financial resources required and available for participation in the agreement or instrument;

    (b) Technical assistance required and available for participation in the agreement or instrument;

    (c) Scientific assistance required and available for participation in the agreement or instrument;

    (d) Information on the (operation of the) agreement or instrument to Governments, parliaments, press, NGOs, industries and the general public;

    (e) Role of parliaments, press, NGOs, industries and public opinion in general;

    (f) Availability of reservations.

C. Implementation

12. To what extent has the implementation of agreements or instruments been constrained or accelerated by provisions regarding their entry into force?

13. What are the commitments imposed on parties by these agreements and instruments, and how is compliance by parties with their commitments monitored and measured?

14. How do parties report on their performance in implementing agreements and instruments, and to what extent have they complied with reporting duties?

15. Which are the specific requirements (if any) of data supply and data disclosure, and to what extent have they been met by the parties?

16. Which possibilities exist to promote compliance and to follow up on non-compliance, and to what extent have they been used?

17. Which mechanisms are available to deal with disputes over implementation and to what extent have they been used?

18. Which factors influenced the implementation? e.g.

    (a) Financial resources required and available for implementation of the agreement or instrument;

(b) Technical assistance required and available for implementation of the agreement or instrument;

(c) Scientific assistance required and available for implementation of the agreement or instrument;

(d) Information on the (operation of the) agreement or instrument to Governments, parliaments, press, NGOs, industries and the general public;

(e) Role of parliaments, press, NGOs, industries and public opinion in general;

(f) International supervisory or implementing bodies;

(g) Obligations to report on compliance and/or to supply and disclose data;

(h) Non-compliance procedures and procedures for settlement of disputes (including fact-finding procedures).

D. Information

19. In which form and in which languages are the texts of existing agreements and instruments published and disseminated?

20. How is current information on the operation and implementation of international agreements and instruments made available to Governments, to the industries concerned and to the general public?

21. What additional materials are available to provide guidance for the implementation of international agreements and instruments at the national level?

22. To what extent is the above information used in international and national training and education programmes?

E. Operation, review and adjustment

23. Which are the institutional arrangements for international administration of existing agreements and instruments?

24. What are the annual (1990) costs of international administration (secretariat, meetings, programmes) of agreements and instruments, and how are they financed?

25. Which are the main benefits and the main cost elements of national participation in existing agreements and instruments, and which possibilities exist to reduce participation cost for developing countries?

26. Which mechanisms are available to ensure that scientific knowledge and advice is taken into account in policy-making decisions under these agreements and instruments?

27. How do these arrangements and mechanisms ensure the effective participation of (a) national authorities, especially from developing countries; and (b) non-governmental participants, including the industries concerned and the scientific community?

28. Which mechanisms are available to ensure periodic review and adjustment of international agreements and instruments in order to meet new requirements, and to what extent have they been used?

F. Codification programming

29. Which new drafts, or draft revisions of existing agreements and instruments, in the environmental field are currently under preparation or negotiation?

30. To what extent and through which mechanisms is drafting coordinated with related work regarding other agreements and instruments?

31. Which are the remaining gaps that need to be covered by legal provisions?

32. To what extent are mechanisms other than formal agreements or instruments contributing to the development of international law in the field of the environment?

ANNEX III

Revision of the list of agreements and instruments contained in A/CONF.151/PC/77

1. In section (A), take into account the Declaration of the United Nations Conference on the Human Environment, the 1982 World Charter for Nature, and add the 1957 Treaty Establishing the European Economic Community (as revised by the 1986 Single European Act) with reference to environment-related EEC agreements, decisions, directives and regulations.

2. Include an evaluation of the relationship between existing agreements or instruments in the environmental field and relevant international trade agreements and other development-related agreements or instruments, taking into account the 1990 Declaration on International Economic Cooperation of the General Assembly, the International Development Strategy for the Fourth United Nations Development Decade, and progress in the preparation of a Code of Conduct for Transnational Corporations.

3. In section (B), include representative examples of relevant bilateral agreements or instruments regarding shared natural resources and the protection and enhancement of the environment.

4. In section (C), include environment-related agreements and instruments regarding outer space.

5. In section (E), delete Nos. 65 and 67 and add the 1989 Convention on the Prohibition of Driftnet Fishing in the South Pacific, and related protocols.

6. In section (F), correct the French title of No. 84.

7. Rearrange Nos. 32, 35, 42, 83, 86, 87, 88 and 91 in a new section on "liability for damage".

DRAFT DECISION II

Principles on general rights and obligations

The Preparatory Committee for the United Nations Conference on Environment and Development,

(a) Taking note of A/CONF.151/PC/78 and documents submitted by delegations (A/CONF.151/PC/WG.III/CRP.8, A/CONF.151/PC/83, A/CONF.151/PC/WG.III/L.5, A/CONF.151/PC/WG.III/L.6, A/CONF.151/PC/WG.III/L.16*, and A/CONF.151/PC/WG.III/L.17*);

(b) Decides to consider and take appropriate action on A/CONF.151/PC/WG.III/L.6 at its fourth session;

(c) Decides to take as a basis for the discussion at the fourth session of the Preparatory Committee, the ideas and proposals contained in the above-mentioned documents, in combination with the proposals from delegations contained in A/CONF.151/PC/WG.III/L.8 and Add.1, without prejudice to further contributions or proposals to be submitted by national delegations or regional groups after the third session of the Preparatory Committee;

(d) Requests the Secretary-General of the United Nations Conference on Environment and Development to update A/CONF.151/PC/WG.III/L.8 to incorporate all proposals from delegations and to reflect precisely the state of discussions on it at the end of the third session of the Preparatory Committee in preparation for further deliberations at the fourth session of the Preparatory Committee.

DRAFT DECISION III

Legal instruments for transboundary waters

The Preparatory Committee of UNCED,

Having taken note of the progress report of the Secretary-General on the development of legal instruments for transboundary waters (A/CONF.151/PC/79),

In view of the need to take into account further progress on this matter in the International Law Commission of the United Nations and in the United Nations Economic Commission for Europe, as well as the results of the International Conference on Water and the Environment,

Decides to consider this matter under agenda item 2 of Working Group III at the fourth session of the Preparatory Committee.

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* To be issued after the session.

DRAFT DECISION IV

Environmental disputes: prevention and settlement

The Preparatory Committee of the United Nations Conference on Environment and Development,

Recalling General Assembly resolution 44/228 on the United Nations Conference on Environment and Development and in particular paragraph 15 (w), under which the Conference should assess the capacity of the United Nations system to assist in the prevention and the settlement of disputes in the environmental sphere and to recommend measures in this field, while respecting existing bilateral and multilateral agreements that provide for the settlement of such disputes,

Bearing in mind the interrelationship of environmental policies, development strategies and peaceful cooperation to achieve global sustainable development,

Recalling Principle 21 of the Declaration of the United Nations Conference on the Human Environment, held in Stockholm in June 1972,

Taking note of the proposals contained in A/CONF.151/PC/L.29 of 22 March 1991 and A/CONF.151/PC/WG.III/L.1 of 27 March 1991,

1. Decides to devote one or two sessions of Working Group III under agenda item 2 at the fourth session of the Preparatory Committee to subparagraph 15 (w) of General Assembly resolution 44/228; and

2. Requests the secretariat, in the evaluation of international agreements in preparation for the fourth session of the Preparatory Committee, to give special attention to the mandate of paragraph 15 (w) of General Assembly resolution 44/228.

DRAFT DECISION V

Institutions

The Preparatory Committee for the United Nations Conference on Environment and Development,

(a) Takes note of the progress reports on institutions by the Secretary-General of the Conference (A/CONF.151/PC/36, A/CONF.151/PC/80 and Corr.1) and comments thereon; and

(b) Requests the Secretary-General of the United Nations Conference on Environment and Development to prepare an updated compilation of institutional proposals made by delegations and others during the third session of the Preparatory Committee, including those made in Working Groups I and II and the plenary as well as relevant observations that may be contained in national reports, and originating from regional preparatory conferences with a focus on options for action.

DRAFT DECISION VI

Provisional agenda for the third session of Working Group III

1. Adoption of the agenda and other organizational matters

2. Survey of existing agreements and instruments and its follow up

3. Principles on general rights and obligations

4. Other legal, institutional and related matters, as well as legal and institutional aspects of cross-sectoral issues, including those referred to Working Group III by Working Group I, Working Group II and the Plenary of the Preparatory Committee

5. Adoption of the report of the Working Group.

ANNEX I

Documents before Working Group III

Document number	Agenda item	Title or description
A/46/48 (Part I)		Report of the Preparatory Committee for the United Nations Conference on Environment and Development on its second session
A/CONF.151/PC/36	5	Progress report of the Secretary-General of the Conference on institutions
A/CONF.151/PC/39 and Corr.1	1	Annotated provisional agenda for the third session of the Preparatory Committee
A/CONF.151/PC/77	3	Note by the secretariat on a survey of existing agreements and instruments, and criteria for evaluation
A/CONF.151/PC/78	4	Note by the secretariat on an annotated check-list of principles on general rights and obligations
A/CONF.151/PC/79	5	Progress report by the secretariat on the development of legal instruments for transboundary waters
A/CONF.151/PC/80	5	Progress report of the Secretary-General of the Conference on institutions
A/CONF.151/PC/81	5	Letter dated 27 June 1991 from the Permanent Representative of Peru to the United Nations Office at Geneva addressed to the Secretary-General of the United Nations Conference on Environment and Development

Document number	Agenda item	Title or description
A/CONF.151/PC/83	4	Letter dated 17 July 1991 from the Permanent Representative of Peru to the United Nations Office at Geneva addressed to the Secretary-General of the United Nations Conference on Environment and Development
A/CONF.151/PC/L.29	5	Letter dated 19 March 1991 from the head of the delegation of Austria containing a proposal submitted by the PENTAGONALE countries and Poland, regarding a resolution on the prevention of international disputes concerning the environment
A/CONF.151/PC/WG.III/L.1	5	Letter dated 26 March 1991 from the head of the delegation of Austria containing a proposal submitted by the PENTAGONALE countries and Poland, regarding elements for a resolution on the settlement of international disputes concerning the environment
A/CONF.151/PC/WG.III/L.4	5	United States proposal for improving United Nations institutional involvement in environmental affairs: enhancing central coordination and the role of UNEP

Document number	Agenda item	Title or description
A/CONF.151/PC/WG.III/L.5	4	Letter dated 15 August 1991 from the Head of the delegation of Canada to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development
A/CONF.151/PC/WG.III/L.6	4	Draft proposal submitted by Ghana on behalf of the States Members of the United Nations that are members of the Group of 77
A/CONF.151/PC/WG.III/L.7 and Add.1	7	Draft report of Working Group III
A/CONF.151/PC/WG.III/L.8 and Corr.1 and Add.1	4	Chairman's consolidated draft
A/CONF.151/PC/WG.III/L.9 and Corr.1	3	Chairman's summary
A/CONF.151/PC/WG.III/L.10	5	Chairman's summary
A/CONF.151/PC/WG.III/L.11	5	Draft decision submitted by Sweden
A/CONF.151/PC/WG.III/L.12	5	Draft decision submitted by Austria, Czechoslovakia, Hungary, Italy, Kenya, Poland, Switzerland and Yugoslavia
A/CONF.151/PC/WG.III/L.13	4	Chairman's summary
A/CONF.151/PC/WG.III/L.14	6	Provisional agenda for the third session of Working Group III
A/CONF.151/PC/WG.III/L.15	3 and 5	Draft decisions submitted by the Chairman

Document number	Agenda item	Title or description
A/CONF.151/PC/WG.III/L.16	4	Letter dated 23 August 1991 from the Permanent Representative of the Holy See to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development
A/CONF.151/PC/WG.III/L.17	4	Letter dated 29 August 1991 from the Head of the delegation of Colombia to the Preparatory Committee for the United Nations Conference on Environment and Development at its third session addressed to the Secretary-General of the United Nations Conference on Environment and Development
A/CONF.151/PC/WG.III/L.18	4	Draft decision proposed by the Chairman on the basis of informal consultations
A/CONF.151/PC/CRP.8	2	Proposal submitted by the Union of Soviet Socialist Republics

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